

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JUSTIN SCHICK, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0202

Case Type: PA

DECISION NO. 41492

Appearances:

Sean Heiser, 1616 E Road 2, Edgerton, Wisconsin, appearing on behalf of Justin Schick.

David G. Makovec, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER

On February 20, 2026, Justin Schick filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Health Services. The appeal was assigned to Commission Examiner Anfin J. Wise.

On September 16, 2025, pursuant to Wis. Stat. § 227.46(3)(a), Examiner Wise was given final authority to issue the Commission's decision.

An in-person hearing was held on April 22, 2026, by Examiner Wise. The deadline to file written closing argument was set for May 1, 2026. At the Appellant's request, the deadline was extended to May 4, 2026. DHS submitted written closing argument on May 4, 2026. Schick untimely filed his written closing argument on May 5, 2026. That same day, Schick filed a motion to accept the untimely filing of his closing argument. On May 12, 2026, DHS objected to the untimely filing given that an extension had already been granted. On May 12, Examiner Wise ruled that the untimely filing would be noted, however incorporated into the record.

Being fully advised on the premises and having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. Justin Schick (Schick) is employed by the State of Wisconsin Department of Health Services (DHS), as a Psychiatric Care Technician-Advanced (PCT-A) at Mendota Mental Health Institute (MMHI) and had permanent status in class when he was suspended for one day.

2. The DHS is a state agency responsible for the operation of various mental health facilities including MMHI, a psychiatric hospital, located in Madison, Wisconsin

3. On November 25, 2025, Schick stated, “ICE must not be this far north yet,” in response to a comment from a coworker about the noise from the roofing work being done. The roofers were predominately of Mexican descent.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations Commission has jurisdiction over this appeal pursuant to Wis. Stat. § 230.44 (1)(c).

2. The State of Wisconsin Department of Health Services had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Justin Schick for one day.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

ORDER

The one-day suspension of Justin Schick by the State of Wisconsin Department of Health Services is affirmed.

Issued at Madison, Wisconsin, this 16th day of June 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Anfin J. Wise

Anfin J. Wise, Hearing Examiner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission ... if the appeal alleges that the decision was not based on just cause.

Justin Schick had permanent status in class at the time of his suspension, and his appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Schick was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

On November 25, 2025, there was a conversation at the nurses' station at MMHI about the loud noise from the roofing work being done. The roofing and construction work began in the summer of 2025, and the workers contracted by DHS spoke Spanish and were predominately of Hispanic or Mexican descent. During the conversation, Schick jokingly stated, "ICE must not be this far north yet."

Schick does not deny that he made the statement. Instead, he claims that the statement was taken out of context and that he was actually discussing an article he read from the night before, presumably about immigration and enforcement. At the hearing, he testified that he did not recall that the conversation was related to noise on the roof or referring to the Mexican roofers. However, credible testimony and evidence established that Schick's comment was in response to the discussion about the roofers. His comment was disrespectful, racially insensitive, and made in the presence of staff and on a unit where there are patients from all different countries and nationalities. Such comments during a time in the country where ICE enforcement in select cities was taking place, along with the basic expectation of respectfulness in the workplace, should not be tolerated. Accordingly, the Commission is persuaded that Schick's statement was offensive and unprofessional, based on the atmosphere at the time surrounding immigration and customs enforcement, and was in violation of DHS's respectful workplace policy. Thus, misconduct has been established and discipline is warranted.

In his defense, Schick argued that a coworker, J.H., received a non-disciplinary Letter of Expectation (LOE), after making a comment about a rope, a sturdy branch, and gesturing a strangling motion while in the presence of persons of color. DHS contended that J.H.'s comment

was not made directly to staff or in the orbit of staff, and that J.H. expressed remorse for her behavior. In contrast, Schick's statement was made directly in the presence of a Hispanic nurse and others, and Schick did not express remorse during the investigation. Here, the Commission is satisfied that disparate treatment has not been established.

Turning now to a just cause consideration of the level of discipline Schick received. The Commission finds that Schick's misconduct does provide just cause for progressive discipline and the imposition of a one-day suspension. It is expressly noted that a one-day is the first step in the progressive disciplinary schedule. Therefore, the one-day suspension is affirmed.

Issued at the City of Madison, Wisconsin, this 16th day of June 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Anfin J. Wise

Anfin J. Wise, Hearing Examiner